

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMIE MCVICKER,)	
)	CIVIL ACTION NO. 3:20-cv-140
Plaintiff,)	
)	JUDGE KIM R. GIBSON
v.)	
)	
GREGORY BRIGGS, JOHN CARON,)	
TONI MARONOWSKI, and BRIAN)	
PELESKY)	
)	
)	
)	
Defendants.)	

MEMORANDUM ORDER

This matter is before Magistrate Judge Maureen P. Kelly for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636 and Local Civil Rule 72.

On July 21, 2020, Plaintiff Jamie McVicker ("McVicker") filed a Proposed Complaint against Defendants Gregory Briggs ("Briggs"), John Caron ("Caron"), Toni Maronowski ("Maronowski"), and Brian Pelesky ("Pelesky") (collectively "Defendants"), alleging that they violated his First, Eighth, and Fourteenth Amendment rights while he was a pretrial detainee and convicted inmate at Somerset's Municipal County Jail. (*See* ECF No. 6.) In his complaint, McVicker sought relief under four separate counts. (*Id.*) On December 4, 2020, the Defendants filed a Motion to Dismiss McVicker's Complaint. (ECF No. 21.)

The Magistrate Judge filed a Report and Recommendation on July 9, 2021 (ECF No. 36), recommending that the Court: (1) deny Defendants' Motion to Dismiss with respect to Count I of McVicker's Complaint; (2) grant the Defendants' Motion to Dismiss with respect to Counts II,

III, and IV of McVicker's Complaint; (3) grant McVicker leave to amend his Complaint relative to Counts II and IV; and (4) deny McVicker leave to amend relative to Count III. (*Id.* at 20.)

The parties were notified that, in accordance with 28 U.S.C. § 636(b)(1), they had fourteen days to file written objections to the Report and Recommendation. The Defendants timely filed objections. (ECF No. 37.) I have reviewed *de novo* Defendants' objections and reject them.

McVicker stated that he has no objections to the Report and Recommendation, and he also made the Court aware that he has chosen not to amend Counts II and IV of his Complaint. (ECF No. 38.) Therefore, because McVicker has made this Court aware of his intent to "stand on the complaint," the Court will dismiss Counts II and IV with prejudice. *Phillips v. County of Allegheny*, 515 F.3d 224, 245–46 (3d Cir. 2008).

Further, the Court notes that McVicker submitted a Response to Defendants' Objections to Report and Recommendation, in which he indicated that he is seeking a preliminary injunction with respect to Count I. (ECF No. 39 at 1.) Further, McVicker filed a Motion to Amend Pleading, in which he appears to ask the Court to allow him to amend his Complaint with an eye towards Count I. (*See* ECF No. 39.) The Court is not ruling on either of those motions at this stage. However, the Court directs the Clerk to docket McVicker's filing as two separate motions so that the Magistrate Judge may address them.

In sum, I have reviewed the record and the briefs *de novo*. After *de novo* review of the record and the Report and Recommendation, the following order is entered:

AND NOW, this 28th day of September, 2021, the Court adopts the Report and Recommendation as the opinion of this Court except that the dismissal of Counts II and IV is with prejudice, and it is **ORDERED** that: Defendants' Motion to Dismiss (ECF No. 21) is **GRANTED**

IN PART and **DENIED IN PART**, and Counts II, III, and IV of Plaintiff's Complaint (ECF No. 6) are **DISMISSED WITH PREJUDICE**. **IT IS FURTHER ORDERED** that the Clerk shall enter McVicker's filing at ECF No. 39 as two separate motions.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", is written over a horizontal line.

KIM R. GIBSON

UNITED STATES DISTRICT JUDGE